

Response to Office Action  
Mailed August 14, 2001

Serial No. 09/583,486

### **REMARKS**

Claims 1-18 are currently pending in the case and stand rejected under 35 U.S.C. §102(b) over the reference of Rader, and under the judicially created doctrine of obviousness-type double patenting over Bradford et al., U.S. Patent No. 5,725,119, in view of Rader. However, as discussed further hereinbelow, the Rader reference does not in any way teach each and every element recited in the claims, and indeed, cannot teach such elements. Furthermore, Applicants submit that Rader does not teach or motivate the person of ordinary skill in the art to somehow modify the Bradford et al. reference to yield the present reference. Despite such a position, the Applicants may be willing to file a terminal disclaimer to overcome the obviousness-type double patenting rejection if the claims are otherwise in an allowable form.

### **Section 102(b) Rejections**

The Examiner rejects claims 1-18 under §102(b) and merely makes a blanket statement that Rader shows all the structure of the device as recited by the claims. However, the Rader reference falls fall short of teaching all of the limitations in the claims, such that those claims would be anticipated by Rader.

The present invention is a reusable and returnable container which includes a reusable and returnable dunnage structure therein which remains with the container when the container is collapsed and returned. Unlike the container illustrated in the cited Bradford et al. reference, the present invention provides a transfer of product into and out

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of the dunnage structure from a side of the container. As discussed in the Background of the present application, it is desirable to eliminate delay in accessing a part, such as an automotive part, in an assembly line environment. The present invention provides a reusable and returnable container which addresses shortcomings in the prior art, and improves upon the prior art to reduce and eliminate delays associated with removing product from such containers. Claim 1 recites a body having at least two opposing moveable side structures which are configured for being selectively moved into an erected position, and moved into a collapsed position. The Rader reference does arguably teach such a body which includes collapsible sides 16. However, it is at that point where any similarity between Rader and the present invention ends.

Independent claim 1 recites a dunnage structure spanning between the side structures wherein the dunnage structure is operably coupled to the side structures for moving to an erected position when the side structures are erected and moving to a collapsed position in the body when the side structures are collapsed, so that dunnage remains with the container when returned. First, Rader does not teach any such dunnage. The Rader reference shows a collapsible box which might be used to hold hanging files. To that end, as illustrated in Figure 4, the box of Rader includes channel-forming elements 24 holding support bars 25 such that hanging file folders, such as traditional paper file folders might be hung from the bars 25. Such hanging files would be added to the Rader box when the Rader box is erected, for storing such files. However, when the Rader box is collapsed, all the paper and other files therein, which are hanging from bars 25 must be

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removed so that the box may be collapsed. There is absolutely no teaching or suggestion in Rader to operably couple the hanging files to the side structures so that they simultaneously move between erected and collapsed positions along with the moveable side structures. In fact, such hanging files are not conducive for even collapsing. As set forth in the Background Section of the Rader reference, one of the main purposes of Rader is to provide a box which would not collapse when the hanging files are therein. In column 1, lines 19-33, the Rader reference states that if the boxes have a tendency to collapse with hanging files therein it may damage the materials which the hanging files are holding, or otherwise present them in an unacceptable manner. Still further, any hanging files which are even left in the box of Rader when it is collapsed would also be damaged, and probably be made unusable. Furthermore, hanging files are not operably coupled to the side structures as taught in the present invention, for moving to an erected position when the side structures are erected, and moving to a collapsed position when the side structures are collapsed.

Hanging files include end hooks which hang over the bars 25 by gravity. Such files would be smashed if left in the Rader box when it is collapsed, and would remain smashed in the bottom of the box when it is again erected. In fact, such hanging files would probably be so damaged that they could not even be reused. Therefore, the Rader reference clearly does not teach the limitations cited in the independent claim 1 and all of the respective dependent claims, which are directed to a dunnage structure operably coupled to the side

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structures for moving between an erected position and a collapsed position along with the side structures.

All of the claims further recite that the dunnage structure has an open end facing at least one side structure of the body. The side structure is recited as defining an open area which is in alignment with the dunnage structure open end for accessing the dunnage structure and transferring product into and out of the dunnage structure in the container from the side of the container. Again, the Rader reference does not in any way teach such a limitation for either the dunnage structure (i.e. hanging files in Rader) or the side structure (i.e. sides 16 in Rader). The Examiner does not provide any statement on the record as to how the solid sides of the Rader box define an open area in alignment with open ends of the dunnage structures. Clearly, Rader does not have or teach such a feature. Therefore, such a limitation also is not taught in Rader.

The Examiner cannot be arguing that the open top of Rader which allows access to the file folders is considered a side structure defining an open area. First, the top is not a side structure of Rader. With respect to the open top, the Rader reference will provide the same access to product therein as Bradford et al., which top access feature is a feature in the prior art which the present invention is meant to address. Therefore, Rader clearly does not teach or anticipate the limitations recited in the claims regarding at least one of the side structures defining an open area which is aligned with an open end of the dunnage structure. Therefore, the lack of a teaching in Rader of such a limitation is another reason why the Rader reference cannot anticipate the claims under §102(b).

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In speculation, the Examiner certainly could not be implying that the collapsible Rader box could just be turned on its side and therefore have a side structure defining an open area in alignment with the dunnage structure open end. Applicants submit that Rader cannot be used in such a fashion, and that certainly a person of ordinary skill in the art would not try to use the Rader box in such a way. As noted above, the hanging files, which are separate from the Rader box, and which would be provided to be hung within the Rader box when it is erected, are held by end hooks and gravity onto the bars 25. Turning the Rader box on its side, all those files would fall out of the box, along with their contents. The hanging files are not in any way coupled to the Rader box to prevent them from falling out. Therefore, even turning the Rader box on its side would not meet the limitations of the claims and certainly would not be a path chosen by a person of ordinary skill in the art. Therefore, the Rader reference does not teach the limitations recited in the independent claim 1, nor in the respective dependent claims.

Furthermore, the dependent claims recite a combination of elements which are nowhere even suggested in the Rader reference. For example, claim 2 recites that at least one side structure comprises an elongated frame section wherein the dunnage structure is coupled to the elongated frame section, and the open area is defined below the frame section. Rader clearly does not teach such a limitation. Further, for example, claim 9 recites a generally transparent cover overlying the open area of the at least one side structure for closing the side structure while providing visual access to the dunnage structure and its contents. Rader certainly does not teach anything remotely related to

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such a limitation. Other of the dependent claims recite limitations with respect to the dunnage and latching structure or latches which are also clearly not taught in Rader.

Accordingly, the claims currently define over the Rader reference and are not anticipated under §102(b) by that reference. Therefore, the claims are allowable over the Rader reference.

#### **Double Patenting Rejection**

Claims 1-18 are also rejected under the judicially created doctrine of obviousness-type double patenting over the Bradford et al. patent, as modified by Rader. However, as illustrated in Bradford et al., the container therein, and its associated dunnage, is accessed from the top of the container. As such, the Bradford et al. reference clearly does not teach a dunnage structure having an open end which is in alignment with an open area of a side structure to allow access of the dunnage structure for transferring product into and out of the dunnage structure from a side of the container. Rader, as noted above, is also a top-entry box, and does not teach or even suggest otherwise. Accordingly, even if the Bradford et al. reference was modified utilizing the teaching of the Rader reference, a person of ordinary skill in the art would not be taught or motivated to somehow produce the present invention. In fact, simply putting Bradford et al. and Rader together does not even teach all of the limitations recited in the claims. As such, the combination of Bradford et al. and Rader patents would not render obvious the invention as recited in claims 1-18.

Should the claims be otherwise allowable, the Applicants may consider utilization of a terminal disclaimer for overcoming the obviousness-type double patenting. If so, the

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Examiner would certainly be encouraged to telephone the undersigned to discuss the filing of such a terminal disclaimer.

Accordingly, the Applicants submit that all of the claims currently pending are allowable, and requests an indication of their allowance at the Examiner's earliest convenience. If any issues remain in the case, a telephone interview with the undersigned would certainly be encouraged so that prosecution might be expedited.

No fees are believed to be due. However, if any further charges or credits are necessary in this case, please apply them to Deposit Account 23-3000.

Respectfully submitted



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